

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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JAKE LEE,)
Plaintiff,)
)
-against-) Civil No. 07-CV-0338C(SR)
)
ACCESSORIES BY PEAK, and)
RAJESH SHAH,)
Defendants.)
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**PLAINTIFF'S STATEMENT OF MATERIAL FACTS
ON MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, Plaintiff contends that there is no genuine issue with respect to the following material facts on which the Plaintiff Jake Lee's Motion For Partial Summary Judgment Of Willful Patent Infringement is based:

1. U. S. patent No. 6,418,936 (the '936 Patent) (**Ex. B**) is valid, not unenforceable and was duly and legally issued to Plaintiff as inventor of the subject matter thereof (**Ex. A**, Order dated December 14, 2007).
2. Defendants are permanently enjoined and restrained from infringing the '936 Patent (**Ex. A**, Order dated December 14, 2007).
3. Defendants have literally infringed claims 1-6, 8-9 and 11-14 of the '936 Patent (**Ex. C**, Claim Chart).
4. Defendants were given actual notice of the '936 Patent and their infringement thereof as early as March 2003 at the ASD Trade Show in Las Vegas, Nevada, and on at least two other occasions thereafter, prior to the commencement of the lawsuit (**Ex. D**, Jake Lee Decl.; **Ex. F**, Robert Macleod Decl., **Ex. E**, Lee Deposition testimony; **Ex. G**, Defendants' responses to Interrogatories; **Ex. H**, Deposition testimony of Rajesh Shah).

5. Defendants' infringement of the '936 Patent continued after having received actual notice of the patent and of Plaintiff's claim of infringement thereof, which infringement continued even after the commencement of the lawsuit (**Ex. D**, Lee Decl.; **Ex. E**, Lee deposition testimony; **Ex. H**, Defendant Shah's deposition testimony).

6. Plaintiff has lost sales of his patented tobacco pipes as a result of Defendants' infringement (**Ex. E**, Lee deposition testimony).

Respectfully submitted,

November 20, 2008

By: s/ Dariush Keyhani

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